

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11803-MLW

SHENIA DANCY-STEWART as
Administratrix of the Estate of EVELINE
BARROS-CEPEDA,
Plaintiffs,

v.

THOMAS TAYLOR, Jr., and the CITY
OF BOSTON,
Defendants.

**DEFENDANT CITY OF BOSTON'S AND DEFENDANT THOMAS TAYLOR'S
ASSENTED-TO EMERGENCY MOTION TO EXCUSE THE APPEARANCE OF
JOHN GAMELAT THE COURT'S MAY 12, 2008 HEARING**

Defendants, City of Boston and Thomas Taylor, Jr. ("Defendants"), with the assent of witness, Carlos Fernandes, hereby move this Court to excuse the appearance of John Gamel at today's May 12, 2008 hearing, or in the alternative, continue his testimony until May 14, 2008.

As grounds for this motion, the Defendants state as follows:

1. On April 16, 2008, Mr. Fernandes, a percipient witness in this civil rights action, failed to comply with this Court's April 7, 2008 Order that he appear at the April 16, 2008 hearing regarding the Defendants' Motion to Compel his further deposition testimony.
2. During this Court's April 16, 2008 hearing, this Court conducted a hearing during which Mr. John Gamel testified that he provided Mr. Carlos Fernandes with notice of this Court's April 16, 2008 hearing.
3. After hearing, this Court concluded that Mr. Fernandes received proper notice of the April 16, 2008 hearing.
4. Subsequently, this Court issued a bench warrant for the arrest of Mr. Fernandes.
5. On May 9, 2008, Mr. Fernandes was arrested and detained pursuant to the bench warrant.

6. A hearing regarding Mr. Fernandes' detention is scheduled today for May 12, 2008 at approximately 3:15 p.m..
7. This Court issued an Order at approximately 6:39 pm. on Friday, May 9, 2008 requiring Mr. Gamel to be available to testify at the Monday, May 12, 2009 hearing, presumably on the issue of whether Mr. Fernandes received proper notice of the April 16, 2008 hearing.
8. On May 12, 2008, counsel for the Defendants spoke with Mr. Fernandes' counsel, Attorney James Dilday, and during this discussion, Mr. Dilday stated that Mr. Fernandes would acknowledge that service was properly effected regarding the April 16, 2008 hearing.
9. Attorney Dilday also indicated that Mr. Fernandes would not contest the issue of service nor raise the issue that he did not receive proper notice of the April 16, 2008 hearing.
10. Additionally, Mr. Dilday stated that it will be unnecessary for him to cross-examine John Gamel regarding the issue described supra in Paragraphs 8 and 9.
11. The Defendants further state that Mr. Gamel, a private investigator, is unavailable to testify this afternoon, May 12, 2008, because he is currently involved in an extensive surveillance operation located in Western Massachusetts.
12. Undersigned counsel was unable to inform Mr. Gamel of his required court appearance until this morning, May 12, 2008, at approximately 8:00 a.m. because undersigned counsel for the Defendants did not herself become aware that Mr. Gamel's appearance was required until this morning at approximately 8:00 a.m. on May 12, 2008.
13. Given these circumstances, the Defendants respectfully request that Mr. Gamel be excused from his appearance at today's hearing.
14. In the alternative, the Defendants request that Mr. Gamel's testimony, if deemed necessary by this Court, be required on Wednesday, May 14, 2008.
15. Mr. Fernandes has assented to this motion.

WHEREFORE: The Defendants City of Boston and Thomas Taylor, Jr. respectfully requests that this Honorable Court allow their motion.

ASSENTED TO BY:
NONPARTY WITNESS, CARLOS
FERNANDES

By his attorney,

/s/ James S. Dilday

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Respectfully submitted,

DEFENDANTS, THOMAS TAYLOR, JR.
AND CITY OF BOSTON,

By their attorneys:

/s/ Helen G. Litsas

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CERTIFICATE OF SERVICE

I, Helen G. Litsas, hereby certify that on this date I served a copy of the foregoing documents upon lead plaintiff's counsel, Andrew Stockwell-Alpert, by electronic filing, email and facsimile.

5/12/08

/s/ Helen G. Litsas

Date

Helen G. Litsas